



## ***CITY OF MIAMI SPRINGS, FLORIDA***

The Miami Springs **City Council** met in regular session on Monday, May 23, 2005, and during the meeting sat as the **Board of Appeals**. The meetings were held in the Council Chambers at City Hall, beginning at 7:00 p.m. On **ROLL CALL** the following were present:

### **1) CALL TO ORDER AND ROLL CALL**

The meeting was called to order at 8:23 p.m.

The following were present:

Mayor Billy Bain  
Vice Mayor Bob Best  
Councilman Paul C. Dotson  
Councilman Xavier Garcia  
Councilman Rob Youngs

Also Present:

City Manager James R. Borgmann  
Assistant City Manager Ronald K. Gorland  
City Attorney Jan K. Seiden  
City Planner Richard E. Ventura  
City Clerk Magalí Valls

Following the Call to Order/Roll Call, Invocation/Salute to the Flag, Awards & Presentations, Open Forum, Approval of Council Minutes, Reports from Boards & Commissions and the Public Hearings, the regular meeting **RECESSED** at 8:22 p.m. for the **Board of Appeals** meeting.

Sitting as the **Board of Appeals**, Council took the following actions:

### **2) MINUTES OF REGULAR MEETING:**

Minutes of the January 24, 2005 Board of Appeals meeting were approved as written.

**Councilman Youngs moved to approve the minutes. Councilman Dotson seconded the motion. The motion carried unanimously on roll call vote.**

### 3) NEW BUSINESS

**Case #28-V-05**

**Richard Barnes**

**525 Deer Run**

**Zoning: R-1A, Single-Family Residential**

**Lot Size: 112.50' x 194.62'**

Applicant is requesting a variance from Code Section 150-025 (G) (1) (c), *Awnings and canopies in all zoning districts* to maintain an existing free-standing canopy (i.e., a chickee hut) in the required rear and side yard setbacks of his property.

City Planner Ventura read Code Section 150-025 (G) (1) (c), *"No self-supporting or free-standing canopy or carport canopy is permitted in the required side yard setback or rear yard setback area. However, the City Board of Adjustment may grant a variance from this side and rear yard restriction if the requested awning or canopy will be properly screened from adjoining properties and streets, will not create a violation of the public health, safety and welfare, and is supported by the establishment of a 'hardship' in accordance with the standards set forth in this Code"*.

City Planner Ventura stated that there is no copy of a building permit for any chickee hut in the Building Department file or any record that a variance had ever been requested or approved. Measurements taken during the site visit indicate that the columns closest to the south side yard fence are 17 inches away from the fence. The columns closest to the rear property line are 21 feet from the rear yard fence. Per Code, the columns closest to the rear property line would have to be 25 feet. The columns closest to the side property line would have to be 11.25 feet per Code 150-025 (G) (c), which states that the columns would have to meet the required side yard setback, or 10% of the lot width (.10 x 112.5 ft. or 11.25 ft.).

City Planner Ventura stated that at the April 4<sup>th</sup> Board of Adjustment meeting, it was expressed that the main concern was the side yard encroachment. In keeping with similar cases previously presented to the Board, at the April 4<sup>th</sup> Board of Adjustment meeting, Staff had originally recommended that the applicant move the chickee hut to meet both setback requirements (rear-25 ft., side- 10% of lot width) and submit plans and other required documentation to the Building Department in order to receive a permit. The applicant's variance request was therefore denied at the Board of Adjustment meeting and the motion was carried unanimously.

City Planner Ventura reviewed previous Board of Adjustment cases that were similar in nature to the property in question. At the June 2002 Board of Adjustment meeting a case was heard regarding a variance request to maintain a motor boat in the side yard of the applicant's property and to construct an aluminum roof in the side yard over the boat that would violate the side yard setback.

Mr. Ventura said that there were six similar cases that dealt with side and/or rear yard setbacks that were heard by the Board of Adjustment in between the above two mentioned cases. A total of eight cases were heard from June 2002 through March 2005 in which four of these cases were denied.

City Planner Ventura explained that the variance requests that were approved were due to the lot configuration that might have been oddly shaped, the location of the home on the lot might have aided the applicant in providing an argument to the Board that the placement of an awning or canopy was necessary in their particular case, or some of these variance requests were for an open trellis, a lattice-type structure, in which the applicants were required to sign a covenant to the City that guaranteed the applicants would not enclose the trellis and create an actual encroachment.

In response to Councilman Youngs' question, City Planner Ventura replied that his recommendation was to deny the variance requested based on precedent established by the Board of Adjustment. The cases that were heard at the Board of Adjustment meetings of June 2002 through March 2005 were approved by the Board of Adjustment; therefore, the approved cases were not heard by the Board of Appeals.

To answer Mayor Bain's question, City Planner Ventura responded that the cases that requested a variance for an open trellis that were approved were adjoined to the house.

In response to Councilman Garcia's question, City Planner Ventura replied that the variance request to maintain a chickee hut was the first case that dealt with a chickee hut that the City had ever heard.

Councilman Youngs recalled that there was a case that dealt with a chickee hut in Ludlum but he was unsure of the details.

City Planner Ventura stated that the panoramic photograph that was taken of the applicant's rear yard showed the expansiveness of the yard and that the chickee hut could be moved anywhere to meet the setbacks.

In response to Councilman Youngs' question, City Planner Ventura replied that the chickee hut had to be moved 11 feet to the north and 3 feet to the west.

To answer Mayor Bain's question, the applicant responded that the chickee hut measured 10' x 10'.

City Planner Ventura stated that at the Board of Adjustment meeting it was discussed that the distance from the chickee hut to the side yard might pose a fire hazard. The chickee hut does not pose a fire hazard to the adjoining lot per the Florida Building Code.

In response to Mayor Bain's question, City Planner Ventura stated that there is no record of the year the chickee hut was built. The property survey included in the packet is dated 1976 and does not show the chickee hut configured on the concrete slab that surrounds the pool.

The applicant handed City Planner Ventura a photograph that showed the chickee hut existing at least as far back as 1993.

Richard Barnes stated that the house was purchased about a year and a half ago. There was an existing chickee hut and it was full of termites. The chickee hut was removed and replaced. He was not aware that a permit had to be applied for since the chickee hut was only being replaced, and he was simply trying to improve the appearance of his property. The neighbors have never objected to the position of the chickee hut. The variance was being requested because he inherited the situation and he did not create the problem.

In response to Mayor Bain's question, the applicant replied that the chickee hut is the exact same size as the old chickee hut.

The applicant stated that there was an issue with the fence and he had a variance pulled. Code Enforcement Officer Cardini called the applicant informing him that there was a photograph of the chickee hut.

In response to Vice Mayor Best's question, the applicant replied that it did not occur to him that replacing the chickee hut would require a permit.

To answer Councilman Dotson's question, the applicant responded that he has lived in Miami Springs for thirty years and owned two houses on Swan Avenue. There was no way that the chickee hut could be moved to another location.

In response to Mayor Bain's question, the applicant replied that the chickee hut was replaced approximately three or four months ago. With the help of a friend, the chickee hut was completely removed. Approximately six or eight weeks later a certified chickee hut builder was hired to install the new chickee hut. Code Enforcement Officer Cardini cited the applicant the same day the chickee hut was almost finished. It took two days to complete the project.

Councilman Youngs stated that an expense to correct the problem does not constitute a hardship.

Mayor Bain stated that the chickee hut is hardly visible from the alley and was not visible from the front of the house. The chickee hut was not a problem since it was already there when the applicant bought the house.

Councilman Youngs stated that he had a problem with the side yard setback since the chickee hut was on the property line. The recommendation of the Board of Adjustment is respected especially when there is a unanimous decision.

The applicant wondered if anyone had complained about the chickee hut.

Mayor Bain informed the applicant that no one had complained about the chickee hut to the best of his knowledge.

Councilman Youngs stated that the Board could not take into consideration whether or not there were complaints to make a decision.

In response to Mayor Bain's question, the applicant replied that the fence adjacent to the chickee hut still existed and the top of the chickee hut was the only portion visible to their neighbor.

Vice Mayor Best agreed with Mayor Bain and stated that the chickee hut was hardly visible from the alley. The only concern was that the south side of the chickee hut was hanging out to the neighbor's property.

Councilman Dotson stated that the precedent set by previous cases should be followed.

Attorney Seiden stated that this case deals with several issues. The most important issue is case precedent. In the case that the Board would approve the variance, there would need to be grounds for the approval to support the approval that will differentiate this case from prior cases for future use. The permit issue would be handled in the Building Department and not by the Board. The applicant will be required to obtain a permit if the variance is granted. Code Section 150-092 states that if a use of a property is a non-conforming use and it is removed, then the structure is not allowed to be redone. In this case the records do not show that there was ever a permit or a variance. It is not the applicant's fault that he inherited the problem.

In response to Councilman Garcia's question, Attorney Seiden replied that even if the old chickee hut had not been replaced, the Code Enforcement Department would have cited the homeowner.

Mayor Bain stated that the applicant was cited because of the construction of the new chickee hut. There has never been a chickee hut case before and maybe this case should set the precedent to allow the chickee hut to remain since it existed since 1993.

To answer Councilman Garcia's question, Attorney Seiden responded that the biggest problem with this case is the location of the chickee hut to the side yard setback. Every property should maintain 10% of the property line so that there is always a required distance between properties.

Vice Mayor Best stated that 25 courtesy notices were sent out and only one was returned from 501 Deer Run.

Councilman Youngs stated that the standard is a relaxation of the Code that is not contrary to public purpose where the conditions are peculiar to the property, where it is not the result of the activity of the owner, and where a little enforcement will create an unnecessary hardship.

Councilman Youngs added that economics is not legally a hardship. The owner is left with the activity of the previous owner. This case should be distinguished from other free-standing canopies because it is a chickee hut and not an awning, and the chickee hut is in the backyard encroaching on the rear yard setback. The chickee hut has a lot of distance in between the house that makes this case peculiar.

Councilman Dotson stated that the chickee hut is a canopy that is a permanent structure. Other homeowners may relate to the precedent set in this case even if there is not a chickee hut.

Attorney Seiden stated that other homeowners would want to build chickee huts on the property line in the side yard setback if the variance is approved.

Mayor Bain stated that the chickee hut already existed when the applicant bought the house. The applicant simply replaced the old chickee hut with a new one in the exact same location. Replacing the chickee hut was the problem because Code Enforcement caught the violation at that time and would not have done so if the old chickee hut was not replaced. In his opinion, there was no problem with the chickee hut and he would grant the variance to maintain it.

Councilman Garcia stated that a homeowner could build a chickee hut on the property line today and not be caught until 10 or 15 years from now. This would create the same problem because the homeowner could use the excuse that the chickee hut existed 10 or 15 years ago even though a permit was not issued.

City Planner Ventura stated that there was not any documentation issued by the City for a permit or a variance for a chickee hut.

Attorney Seiden stated that every property in the City has a file. The files are not complete and the City has run into many cases where information is missing.

In response to Councilman Garcia's question, the applicant replied that the hardship was that the chickee hut had to be removed and the pool deck had to be rearranged. New concrete would have to be poured.

The applicant stated that the chickee hut should have been addressed at the time the variance for the fence was issued.

Mayor Bain stated that it could be assumed that the extra height of the fence and screening may have been to aid in the screening of the chickee hut.

Councilman Youngs was of the opinion that the Board of Adjustment was aware that the chickee hut existed before the homeowner bought the home.

Vice Mayor Best stated that he had a problem that the applicant did not think of finding out whether or not a permit was required for such a large project.

The applicant stated that he had no intention of doing anything that was wrong, and that he only wanted to improve the appearance of his home.

Councilman Youngs stated that he was inclined to grant the variance but was now inclined to support the Code and the recommendation of the Board of Adjustment.

City Planner Ventura stated that the minutes for the variance for the fence were not in the street file.

Attorney Seiden stated that the pictures were taken post-Hurricane Andrew. The City Council took the position contrary to the Code. The Council accepted the hardship provision to allow rebuilding many things that were destroyed by Andrew. The Code Enforcement Department would have cited the chickee hut whether it was the old or new chickee hut. The chickee hut clearly violates the side yard setback.

Mayor Bain stated that the difference in this case was that the chickee hut existed when the applicant bought the house, and the applicant only replaced the chickee hut with a new one.

Attorney Seiden clarified the Mayor's opinion and stated that the only difference to grant the variance was because the chickee hut existed.

Councilman Youngs stated that if he were to vote for approval of the variance, another reason would have to be given because a precedent of a more dangerous nature would be set.

Vice Mayor Best agreed with Councilman Youngs and said that granting the variance on the basis that the chickee hut already existed would set a bad precedent for the future.

Councilman Garcia stated that there are not any permits that show that the chickee hut existed before.

**Councilman Garcia moved to uphold the decision of the Board of Adjustment and Councilman Youngs seconded the motion.**

Councilman Dotson wondered whether there was going to be an effort to mark a distinction in this case in order to grant the variance.

Councilman Youngs stated although he felt very sympathetic to the applicant his decision was to support the Code and the Board of Adjustment unless there was something concrete that would change his position.

Mayor Bain stated that he had a problem that Code Enforcement cited the applicant shortly after the chickee hut was rebuilt. The applicant faces an unnecessary hardship if the chickee hut has to be removed. There was no precedent since this was the first chickee hut case the Board has heard.

Councilman Garcia stated that it was not Code Enforcement's intention to cite the applicant shortly after the chickee hut was rebuilt.

Mayor Bain stated that there is a possibility that there was a permit or a variance for the original chickee hut.

Attorney Seiden stated that the only thing that was for certain was that there was not a variance or permit for the new chickee hut. In the case that the Board did not feel that there was sufficient information or requested additional information, the case could be tabled.

Vice Mayor Best stated that the packet was all inclusive. He was also sympathetic to the applicant but felt that the Board of Adjustment's decision was correct.

Councilman Dotson stated that he would like to table the case because he was uncomfortable with the fact that the applicant would be penalized when the applicant should be receiving relief rather than a penalty. On the other hand, there is a problem with establishing precedent. Tabling the case would allow more research to be completed in hope of bringing a more definite conclusion.

Councilman Youngs stated that he would defer to tabling the case and wondered in which areas Councilman Dotson wanted more research.

City Planner Ventura stated that there is no other documentation in the City that would support the case. Staff was unable to view minutes as far back as 1970. His main concern was the fire hazard the chickee hut could pose since it was on the property line and overhung into the neighbor's property. The Florida Building Code cleared up the concern because there was no provision that stated that the chickee hut could pose a fire hazard. Staff has been through the file several times and was unaware of any additional information that could be produced.

Attorney Seiden stated that the City Planner and Code Enforcement have already searched the file for any information that would confirm that there was a variance or permit issued for the original chickee hut.

Councilman Garcia stated that the information presented to the Board was very clear, and wanted to appease the applicant by not tabling the case if no additional information could be found.

The applicant stated that he was requesting the variance because he inherited the problem and only replaced the chickee hut to improve his property.

Councilman Dotson withdrew his request to table the case.

**The motion was carried 4-1 with Mayor Bain casting the dissenting vote.**

Attorney Seiden explained that the applicant may contact Staff to move the chickee hut into another location.

**4) OTHER BUSINESS**

None.

**5) ADJOURNMENT**

There was no additional business to be considered by the Council sitting as the Board of Appeals and the meeting was adjourned at 9:40 p.m. to the Council Regular Meeting.

Respectfully submitted,

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Magalí Valls, CMC  
City Clerk

Approved as written during meeting of: September 26, 2005

Transcribed from tape by M. J. Valls